IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15015 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ALEMBIC LTD & 1 - Petitioner(s)
Versus
UNION OF INDIA & 3 - Respondent(s)

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Appearance :
MR UDAY JOSHI FOR M/S TRIVEDI & GUPTA for Petitioner No(s).: 1,2.
NOTICE NOT RECD BACK for Respondent No(s).: 1,2.
MR JITENDRA MALKAN for Respondent No(s).: 1.
NOTICE SERVED for Respondent No(s).: 3,4.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 26/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 Heard Mr.Uday Joshi for M/s.Trivedi & Gupta, learned Advocate for the petitioner and Mr.Jitendra Malkan appearing for respondent Nos. 1, 2 & 4. The dispute between the parties is confined to a limited issue and hence, with the consent of the learned Counsel the matter is taken up for final hearing and disposal today. Rule. Mr.Malkan waives service.

2 The grievance of the petitioner is that the petitioner, a manufacturer of Drugs claimed exemption qua Roxythromycin cleared during September,1996 to December,1996 and Nimesulide cleared during September, 1996 to December,1997 vide Notification No.8/96-CE dated 23.7.1996. The Customs Excise & Service Tax Appellate Tribunal (CESTAT) vide its order dated 11.03.2005 (Annexure-A) held that the petitioner was entitled to exemption qua Nimesulide but rejected the petitioner's claim in so far as Roxythromycin is concerned. The petitioner

moved an application seeking rectification of mistake and by order dated 20/05/2005 the application came to be rejected, because according to CESTAT in absence of any glaring mistake apparent on the face of the record the claim for reconsideration could not be entertained.

3 It is submitted on behalf of the petitioner that the only ground on which the claim of the petitioner was rejected was that the drug Roxythromycin did not find place in any Indian Pharmacopoeia or Pharmacopoeia of any other country viz.,official pharmacopoeia. However, the drug in question appears in Martindale Pharmacopoeia which is official pharmacopoeia of Great Britain. The Tribunal has failed to consider the same and instead referred to European Pharmacopoeia in which admittedly the drug was listed for the first time on 1/1/1997, viz., after the period for which the claim had been made. It was submitted that an extract from Martindale Pharmacopoeia and entry therefrom had been filed before the Tribunal in the

form which appears at page nos. 53 to 55 of the petition (Annexure-J). This submission was made at the bar and hence notice was issued on 18/08/2005.

4 Mr.Malkan has submitted that the respondent authorities have sought clarification from the Tribunal as to whether the documents were there on record of the Tribunal or not. However, it is not necessary to await any such clarification when learned Advocate has made a statement at the bar.

5 In the circumstances, it is apparent that relevant documents which were placed before the Tribunal have escaped notice. It is not necessary to enter into any discussion as to why the Tribunal failed to take the same into consideration. Even if it is a case of pure oversight, it would constitute an apparent error, once the material was there before the Tribunal. In these circumstances, in the interest of justice, it would be just and proper if the appeal to the extent as relatable to claim of Roxythromycin is concerned, is restored to the file

of the Tribunal.

6 Accordingly Appeal No.E/2122/02 is restored to the file of The Customs Excise & Service Tax Appellate Tribunal, West Regional Bench, Mumbai only on the issue of claim as to exemption of Roxythromycin. The order dated 20/05/2005 is quashed in entirety and order dated 11/03/2005 is quashed partially in relation to the findings relatable to claim for exemption of Roxythromycin. The Tribunal shall hear the appeal on this limited count after giving reasonable opportunity of hearing to both the sides.

7 The petition is accordingly allowed to the aforesaid extent. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J) (H.N.Devani, J)

m.m.bhatt